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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DONOVAN DEWAYNE PULLEN,

Defendant and Appellant.

F048311

(Super. Ct. No. F03905326-5)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. David Gottlieb, Judge.

Robert L. S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Stephen G. Herndon and Peter W. Thompson, Deputy Attorneys General, for Plaintiff and Respondent.

**-ooOoo-**

Donovan Dewayne Pullen (Appellant) appeals from a judgment revoking his probation and ordering payment of restitution. On review we will affirm.

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\* Before Ardaiz, P.J., Gomes, J. and Hill, J.

## **FACTS**

On August 10, 2003, Appellant physically assaulted his girlfriend while under the influence of cocaine. On December 31, 2003, the appellant pled no contest to the enhancement in exchange for a grant of probation and a prison sentence not to exceed five years. On May 21, 2004, the court suspended the imposition of judgment and placed appellant on probation. The court ordered payment of a \$100 restitution fine, and further ordered appellant to “enroll in, participate in, and successfully complete a narcotics and alcohol treatment program as a condition of probation.”

Pursuant to the court’s orders, appellant enrolled in the Harbor Lights residential treatment program. Appellant remained in the program for a total of three days, at which time he cut his wrist and was taken to the hospital. After short stays at the county hospital and a psychiatric facility, appellant was released, but arrested shortly thereafter when he reported to the probation department.

On May, 19, 2005, the trial court found appellant violated the terms of his probation by leaving the Harbor Lights program prior to successful completion of the program and therefore upheld the revocation of probation. Pursuant to appellant’s original plea agreement on December 31, 2003, the trial court imposed a five year prison term. The trial court then imposed a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)(2).) and suspended imposition of a \$200 revocation fine (Pen. Code, § 1202.45.).

## **DISCUSSION**

Appellant contends the court improperly imposed two separate restitution fines, one at the original sentencing, and one following the violation of probation. Appellant asserts the restitution fine of \$100 from the original sentencing violated the provisions of Penal Code section 1202.4, subdivision (b), and was therefore unauthorized and should be stricken. Respondent counters the second restitution fine was unauthorized, and requests that the court modify the original restitution fine to reflect the statutory minimum of \$200. Although appellant did not object to imposition of the restitution fine at sentencing, the question whether the court violated its statutory authority is properly

before us in this appeal. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 823.)

An unauthorized sentence is one which “could not lawfully be imposed under any circumstance in the particular case.” (*People v. Scott* (1994) 9 Cal.4th 331, 354.) In *People v. Arata* (2004) 118 Cal.App.4th 195, at 203, the court held that a restitution fine imposed as a condition of probation under Penal Code section 1202.4, subsection (b), survives a subsequent revocation of probation. The amount of a previously imposed restitution fine may not be increased on revocation of probation and any additional fine imposed thereafter is unauthorized and should be stricken. (*Ibid*; see also *People v. Chambers, supra*, 65 Cal.App.4th 819, 820-821, 823.) Therefore, it would appear that the second restitution fine is unauthorized and should be stricken. We disagree, however, that the trial court imposed two separate restitution fines.

Here, the court originally imposed a restitution fine in the amount of \$100. The minimum restitution fine for felony convictions, however, is \$200. (Pen. Code, § 1202.4, subd. (b)(1).) We recognize, as does appellant, the record does not indicate the court was correcting or altering the original fine of \$100 when it imposed the \$200 restitution fine. Nevertheless, we disagree with appellant that as the record now stands appellant is responsible for paying restitution fines totaling \$300. The abstract of judgment lists a single \$200 restitution fine along with a \$200 parole revocation fine under appellant’s “FINANCIAL OBLIGATIONS.” Thus, while the court erred initially by imposing a \$100 restitution fine, we interpret the court’s silence with regard to that fine to mean it was correcting its previous error and modifying the judgment to reflect the proper statutory minimum. The judgment of the trial court is proper as it now stands.

### **DISPOSITION**

The judgment is affirmed.